

**SENSITIVE**

**FEDERAL ELECTION COMMISSION**

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**FIRST GENERAL COUNSEL'S REPORT** 2017 MAR -2 AM 8: 59

**CFLA**

**MUR: 7124**

**DATE COMPLAINT FILED: August 15, 2016**

**DATE OF NOTIFICATION: August 17, 2016**

**LAST RESPONSE RECEIVED: October 7, 2016**

**DATE ACTIVATED: December 1, 2016**

**EARLIEST SOL: March 1, 2021**

**LATEST SOL: July 6, 2021**

**ELECTION CYCLE: 2016**

**COMPLAINANT:**

Foundation for Accountability and Civic Trust

**RESPONDENTS:**

Katie McGinty for Senate and Roberta Golden in  
her official capacity as treasurer

EMILY's List and Ranny Cooper in her official  
capacity as treasurer

WOMEN VOTE! and Leigh Warren in her official  
capacity as treasurer

Majority Forward

**RELEVANT STATUTES  
AND REGULATIONS:**

52 U.S.C. § 30104(b)

52 U.S.C. § 30116(a), (f)

52 U.S.C. § 30118(a)

11 C.F.R. § 109.20

11 C.F.R. § 109.21

11 C.F.R. § 109.22

11 C.F.R. § 109.23

**INTERNAL REPORTS CHECKED:**

Disclosure Reports

**FEDERAL AGENCIES CHECKED:**

None

**I. INTRODUCTION**

The Complaint in this matter alleges that the principal campaign committee of U.S. Senate candidate Katie McGinty coordinated television advertisements supporting McGinty's campaign with EMILY's List, a multicandidate political committee; WOMEN VOTE!, an independent-expenditure-only political committee ("IEOPC") affiliated with EMILY's List; and Majority Forward, a 501(c)(4) nonprofit corporation. The Complaint also alleges that WOMEN

1 VOTE! and Majority Forward republished McGinty campaign materials in their advertisements.  
2 These actions, according to the Complaint, violated the Federal Election Campaign Act of 1971,  
3 as amended (the "Act"), because they were not properly disclosed and resulted in excessive and  
4 prohibited contributions to the Committee, which the Committee knowingly accepted. However,  
5 as discussed in greater detail below, we recommend that the Commission find no reason to  
6 believe that the Respondents violated 52 U.S.C. §§ 30104(b), 30116(a) and (f), and 30118(a) and  
7 close the file.

## 8 II. FACTUAL BACKGROUND

9 Katie McGinty was a 2016 U.S. Senate candidate in Pennsylvania. Katie McGinty for  
10 Senate and Roberta Golden in her official capacity as treasurer (the "Committee") was her  
11 principal campaign committee and maintained her campaign website.<sup>1</sup> EMILY's List and Ranny  
12 Cooper in her official capacity as treasurer ("EMILY's List") is a multicandidate political  
13 committee registered with the Commission,<sup>2</sup> and WOMEN VOTE! and Leigh Warren in her  
14 official capacity as treasurer ("WOMEN VOTE!") is an IEOPC affiliated with EMILY's List  
15 and registered with the Commission.<sup>3</sup> Majority Forward is a 501(c)(4) nonprofit corporation.<sup>4</sup>

16 In 2016, WOMEN VOTE! and Majority Forward paid for and aired television  
17 commercials in Pennsylvania supporting McGinty and attacking her opponents.<sup>5</sup> The Complaint  
18 alleges that the Committee used McGinty's campaign website to coordinate with WOMEN

<sup>1</sup> Statement of Candidacy, Kathleen Alana McGinty (Aug. 4, 2015); KATIE MCGINTY DEMOCRAT FOR SENATE, <https://katiemcginty.com/> (last visited Feb. 8, 2017) (bearing a "paid for by Katie McGinty for Senate" disclaimer).

<sup>2</sup> Amended Statement of Organization, EMILY's List (June 4, 2013).

<sup>3</sup> EMILY's List & WOMEN VOTE! Resp. at 1 (Oct. 6, 2016); Amended Statement of Organization, WOMEN VOTE! (Nov. 4, 2015).

<sup>4</sup> Majority Forward Resp. at 1 (Oct. 7, 2016).

<sup>5</sup> See *infra* at 4-5.

1 VOTE! and Majority Forward about the content and distribution of these commercials.<sup>6</sup>  
2 Specifically, the Complaint alleges that the website had a link to an “obscure” subpage that  
3 contained tips and instructions about the types of ads that IEOPCs and other organizations should  
4 run to maximize the McGinty campaign’s resources and chances of success. That subpage was  
5 entitled “Notice.”<sup>7</sup>

6 The Complaint explains that the “Notice” subpage on the Committee’s website had a  
7 different visual appearance than the rest of the website, did not contain any links back to the  
8 website’s homepage or to other subpages, repeatedly used the phrase “voters need to know,” and  
9 then followed that phrase with a recitation of the information the campaign wanted publicized in  
10 ads.<sup>8</sup> The Complaint alleges that the “Notices” would indicate what segment of the Pennsylvania  
11 population should be targeted with the ads and that the Committee changed the “Notice” page  
12 when it wanted groups to produce new advertisements or wanted to encourage groups to keep  
13 airing a particular ad that was having an impact.<sup>9</sup>

14 The Complaint cites three instances in which it alleges the Committee published  
15 information on the “Notice” page and WOMEN VOTE! and Majority Forward responded by  
16 paying for the Committee’s desired advertising. We compare the Committee’s “Notices” and the  
17 advertisements side by side.

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<sup>6</sup> Compl. at 1 (Aug. 15, 2016).

<sup>7</sup> *Id.* at 2.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.* at 2-4.

"Notice" Page	WOMEN VOTE! Commercial
<p>In March 2016, the "Notice" page stated:</p> <p>At this point of the campaign, voters in Philadelphia and women all across the state of Pennsylvania need to know that Katie McGinty thinks too many families get the short end of the stick and [are] unable to achieve economic security, while the special interests get ahead. As the ninth of ten children and the daughter of a police officer who walked the beat and [a] restaurant hostess, Katie McGinty is fighting to help everyday families, who have been ignored for too long. Katie McGinty is a problem solver who will create jobs, grow wages, and create opportunity.<sup>10</sup></p>	<p>On April 5, 2016, WOMEN VOTE! began airing an advertisement entitled "Get:"</p> <p>Get up. Get to school. Get to work. Get by. Katie McGinty knows the routine. Her dad was a Philly cop, mom worked in a restaurant. Then . . . hard work opened doors. Now . . . it's not quite enough. But McGinty's working to change that. Helping create thousands of new jobs. She'll always stand up for manufacturing, higher wages, and equal pay for women. So opportunity never gets out of reach. Katie McGinty for Senate.<sup>11</sup></p>

- 1 The Complaint notes that the information about McGinty's parents was already readily available
- 2 on the "About Katie" subpage of the campaign website, yet the Committee published it again on
- 3 the "Notice" page. The Complaint asserts that this dual publication is evidence that the "Notice"
- 4 page had a different purpose than the rest of the website.<sup>12</sup>

"Notice" Page	WOMEN VOTE! Commercial
<p>In early April 2016, the Committee updated the "Notice" page to read:</p> <p>Voters in Philadelphia and women across the Commonwealth of Pennsylvania still need to know the real Joe Sestak [McGinty's primary opponent] record. He supported a budget plan backed by Tea Party Republicans that would have cut Social Security and Medicare benefits, raised the Social Security retirement age to 69, and forced higher out-of-pocket spending for Medicare recipients.<sup>13</sup></p>	<p>On April 11, 2016, WOMEN VOTE! began airing a second commercial entitled "Spin:"</p> <p>For Senate, no spin . . . just facts. Joe Sestak supports a plan that the <i>New York Times</i> reported makes cuts to Social Security benefits. And the plan raises the retirement age. It's true. The AARP opposed the plan, citing dramatic cuts to Medicare benefits. The plan Sestak supports means higher out-of-pocket costs for millions on Medicare. Any way you spin it. The truth about Sestak is gonna hurt.<sup>14</sup></p>

<sup>10</sup> Committee Resp. at 1-2 (Oct. 11, 2016).

<sup>11</sup> *Id.* at 2-3.

<sup>12</sup> Compl. at 2-3, 5.

<sup>13</sup> Committee Resp. at 2.

<sup>14</sup> *Id.* at 3-4.

- 1 It appears that both of WOMEN VOTE!'s commercials aired in and around Philadelphia, the  
 2 location mentioned in the "Notices."<sup>15</sup>

Majority Forward Commercial	"Notice" Page
<p>On June 24, 2016,<sup>16</sup> Majority Forward started airing a commercial entitled "Love Affair:"</p> <p>It's a love affair. Pat Toomey [McGinty's general opponent] and Wall Street. Wall Street's given Toomey \$2.7 million dollars in contributions. And Toomey supported privatizing Social Security in the stock market. Wall Street would profit with hundreds of billions in fees, even if the market crashed and people lost everything. Pat Toomey, Wall Street. It may be love for them, but it's heartache for the rest of us.<sup>17</sup></p>	<p>On July 6, 2016, the Committee updated the "Notice" page to state:</p> <p>Pennsylvania voters all across the state need to keep hearing a lot more about Pat Toomey and Wall Street. Wall Street's given Toomey \$2.7 million in contributions, and Toomey supported privatizing Social Security in the stock market. Sen. Toomey made millions as a Wall Street banker. Then he moved to Hong Kong, working for a billionaire Chinese investor. In Congress, Toomey carries Wall Street's water – voting to let banks continue their risky practices and opposing cracking down on Chinese currency manipulation. Toomey working for China has helped cost Pennsylvania more than one hundred and twenty thousand jobs.<sup>18</sup></p>

- 3 As to this final commercial, the Complaint acknowledges that Majority Forward aired "Love  
 4 Affair" before the Committee updated McGinty's campaign website to discuss Toomey's  
 5 relationship with Wall Street. The Complaint alleges that coordination occurred because the  
 6 Committee used the "Notice" page to urge Majority Forward and other organizations to keep  
 7 highlighting Toomey's corporate interests in this and additional communications. The

<sup>15</sup> EMILY's List wrote a press release about "Spin," stating that the commercial was "part of WOMEN VOTE!'s \$1 million program that started on April 5<sup>th</sup> mobilizing voters in the Philadelphia area to support Katie McGinty's bid for Senate." Compl., Attach. E. April 5 was the first day "Get" aired. Committee Resp. at 2.

<sup>16</sup> Majority Forward, Report of Independent Expenditures Made and Contributions Received (July 15, 2016).

<sup>17</sup> Committee Resp. at 4.

<sup>18</sup> *Id.* at 2.

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1 Complaint also points out that the Committee copied some of Majority Forward's language  
2 verbatim for the July 6, 2016 "Notice."<sup>19</sup>

3 Based on the nature of the "Notice" page, the timing and similarities between the  
4 "Notices" and the commercials, and the geographic area in which the commercials aired, the  
5 Complaint alleges that the Committee coordinated with WOMEN VOTE! and Majority Forward  
6 to produce and/or distribute the three commercials. The Complaint asserts that the  
7 communications meet the regulations' three-part test for coordination and thus qualify as  
8 contributions to the Committee. Therefore, according to the Complaint, WOMEN VOTE! and  
9 Majority Forward, as an IEOPC and a corporation, respectively, violated the Act by making  
10 prohibited and excessive contributions to the Committee; the Committee violated the Act by  
11 accepting unlawful contributions; and all three failed to accurately report their activities to the  
12 Commission.<sup>20</sup>

13 The Complaint also argues that, even if there was no coordination, WOMEN VOTE! still  
14 republished material from the "Notice" page in its commercials. The Complaint argues that the  
15 commercials and "Notices" had similar if not identical language and addressed the same themes,  
16 amounting to republication. The Complaint then concludes that, because the act of republishing  
17 campaign materials is a contribution, WOMEN VOTE! made prohibited and excessive  
18 contributions to the Committee, the Committee accepted the contributions, and they both failed  
19 to accurately report the contributions.<sup>21</sup>

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<sup>19</sup> Compl. at 3-4, 7.

<sup>20</sup> *Id.* at 4-6.

<sup>21</sup> *Id.* at 5, 7. The Complaint's allegations against WOMEN VOTE! pertain only to its alleged republication of the Committee's written materials. The Complaint does not reference video footage, recordings, photographs, or other media.

1 Finally, while the Complaint acknowledges that Majority Forward aired "Love Affair"  
2 before the Committee posted the July 2016 "Notice," it suggests that the Committee may have  
3 informed Majority Forward of the content of the "Notice" in private, allowing Majority Forward  
4 to republish the content in "Love Affair." The Complaint alleges that this act of republication  
5 would also be a prohibited and unreported contribution, which the Committee knowingly  
6 accepted.<sup>22</sup>

7 The Respondents deny all of the Complaint's allegations. The Respondents first argue  
8 that, despite the representations in the Complaint, the "Notice" page was publicly available as  
9 part of McGinty's campaign website, and the Commission has determined that publicly available  
10 information does not satisfy the regulations' three-part test for coordinated communications.<sup>23</sup>  
11 Furthermore, the Respondents claim that they did not communicate with each other about the  
12 commercials and that the evidence cited in the Complaint is insufficient to create an inference  
13 that they did.<sup>24</sup> Finally, the Respondents state that the text of the WOMEN VOTE! commercials  
14 varied substantially from the "Notices," and that mere commonality of theme on its own does not  
15 amount to republication.<sup>25</sup>

### 16 III. LEGAL ANALYSIS

17 The Act provides that an expenditure made by any person "in cooperation, consultation,  
18 or concert, with, or at the request or suggestion of, a candidate, his authorized political  
19 committees or their agents" constitutes an in-kind contribution.<sup>26</sup> IEOPCs and nonprofit

<sup>22</sup> *Id.* at 7. Again, these republication allegations concern only written materials.

<sup>23</sup> Committee Resp. at 5-6; EMILY's List & WOMEN VOTE! Resp. at 4-6; Majority Forward Resp. at 4-6.

<sup>24</sup> Committee Resp. at 1, 4; EMILY's List & WOMEN VOTE! Resp. at 1, 3; Majority Forward Resp. at 1-2.

<sup>25</sup> Committee Resp. at 6-7; EMILY's List & WOMEN VOTE! Resp. at 6-7; Majority Forward Resp. at 4.

<sup>26</sup> 52 U.S.C. § 30116(a)(7)(B)(i); 11 C.F.R. § 109.20; *see also* 52 U.S.C. § 30104(b) (requiring political committees to disclose to the Commission contributions received from other political committees and persons).

1 corporations are prohibited from making contributions to candidates and their authorized  
2 committees.<sup>27</sup> Multicandidate committees may make contributions to candidates and authorized  
3 committees but are limited to \$5,000 per election.<sup>28</sup> It is unlawful for candidates and political  
4 committees to knowingly accept an excessive or prohibited contribution.<sup>29</sup>

5 **A. There is no Reason to Believe that WOMEN VOTE! and Majority Forward**  
6 **Coordinated their Communications with the Committee**

7  
8 The Commission's regulations provide a three-part test for determining when a  
9 communication is a coordinated expenditure, which is treated as an in-kind contribution.<sup>30</sup> The  
10 communication must: (1) be paid for by a third party; (2) satisfy one of four "content" standards  
11 listed in 11 C.F.R. § 109.21(c); and (3) satisfy one of five "conduct" standards listed in 11 C.F.R.  
12 § 109.21(d).<sup>31</sup> In this matter, the Respondents have not disputed that the commercials satisfy the  
13 "payment" and "content" requirements. We therefore focus our analysis on the "conduct"  
14 standards.

15 The Complaint alleges that the commercials satisfy the "request or suggestion" "conduct"  
16 standard, which requires that the communication be "created, produced, or distributed at the  
17 request or suggestion of a candidate [or] authorized committee."<sup>32</sup> The Commission has  
18 explained that the "request or suggestion" "conduct" standard refers to requests or suggestions  
19 "made to a select audience, but not those offered to the public generally."<sup>33</sup> As an example of

<sup>27</sup> See 52 U.S.C. §§ 30116(f), 30118(a); Advisory Op. at 2010-11 (Commonsense Ten) at 2-3.

<sup>28</sup> See 52 U.S.C. § 30116(a)(2).

<sup>29</sup> *Id.* §§ 30116(f), 30118(a).

<sup>30</sup> 11 C.F.R. § 109.21(a)-(b).

<sup>31</sup> *Id.* § 109.21(a).

<sup>32</sup> *Id.* § 109.21(d)(1). The Complaint purports to address all five "conduct" standards but provides no evidence or specifics as to any standard but "request or suggestion." See Compl. at 6-7.

<sup>33</sup> Coordinated and Independent Expenditures, 68 Fed. Reg. 421, 432 (Jan. 3, 2003) (explanation and justification) ("E&J").

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1 the distinction between generalized and targeted requests, the Commission has provided that "a  
2 request that is posted on a web page that is available to the general public is a request to the  
3 general public and does not trigger the [request or suggestion] conduct standard," whereas a  
4 request sent through an intranet service or by email to a discrete group of recipients would satisfy  
5 the standard.<sup>34</sup>

6 In MUR 6821 (Shaheen for Senate), the Commission found that the use of publicly  
7 available information, including the use of information contained on a candidate's website, was  
8 not sufficient to satisfy the "conduct" standards.<sup>35</sup> The Complaint in the Shaheen matter alleged  
9 that Shaheen's principal campaign committee and the Democratic Senatorial Campaign  
10 Committee coordinated with an IEOPC when they posted information about Shaheen's opponent  
11 on Shaheen's campaign website and on Twitter. The IEOPC responded to the posts within two  
12 days, circulating a television commercial criticizing Shaheen's opponent on the same grounds as  
13 discussed in the posts.<sup>36</sup>

14 Here, the facts appear to be materially indistinguishable from the Shaheen MUR.  
15 Contrary to the statements in the Complaint, the Committee's "Notices" were not obscure and  
16 were readily available on the Committee's website, with a featured "Notice" even appearing on  
17 the website's homepage. Users could click a "read more" button within a box containing the  
18 featured "Notice" to be taken to the "Notice" subpage, which was still part of the campaign  
19 website.<sup>37</sup> Thus, just as in MUR 6821, the Committee's alleged request or suggestion for

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<sup>34</sup> *Id.*

<sup>35</sup> MUR 6821 (Shaheen for Senate), Factual & Legal Analysis at 7-8 ("F&LA").

<sup>36</sup> *Id.* at 1-3.

<sup>37</sup> *WayBack Machine*, INTERNET ARCHIVE (last visited Feb. 8, 2017) (search for "https://katiemcginty.com/" to see snapshots of what the campaign website looked like at various times during 2016). Because of the prominence of the website, the "Notices," and the "Notice" page, and the easy-to-understand language used by the Committee in describing what "voters need to know,"

1 advertising appeared on a publicly available website—specifically, the candidate's campaign  
2 website—and was directed to the public generally instead of a select audience. As such, the  
3 McGinty campaign's "Notices" do not satisfy the "request or suggestion" "conduct" standard.<sup>38</sup>

4 The Complaint also fails to present any information suggesting that the Respondents had  
5 any communications beyond the public "Notices." The cited similarities between the "Notices"  
6 and the commercials, and the timing and geographic placement of the commercials, are  
7 insufficient to show that any additional private communications occurred. Therefore, because  
8 the available information does not support a determination or reasonable inference that the  
9 "conduct" prong of the coordination test was met, there is no basis to conclude that the  
10 commercials qualify as coordinated communications. Accordingly, we recommend that the  
11 Commission find no reason to believe that the Committee, WOMEN VOTE!, or Majority  
12 Forward made or accepted prohibited or excessive contributions, or failed to comply with their  
13 reporting requirements, in violation of 52 U.S.C. §§ 30104(b), 30116(a) and (f), and 30118(a).

14 **B. There is no Reason to Believe that Majority Forward and WOMEN VOTE!**  
15 **Republished McGinty Campaign Materials**  
16

17 Similarly, there is no basis to conclude that the Respondents republished campaign  
18 materials. The Commission's regulations provide that, even when there is no evidence of  
19 coordination, "[t]he financing of the dissemination, distribution, or republication, in whole or in  
20 part, of any . . . campaign materials prepared by the candidate [or] the candidate's authorized  
21 committee . . . shall be considered a contribution for the purposes of contribution limitations and

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<sup>38</sup> See 11 C.F.R. § 109.21(a), (d); E&J, 68 Fed. Reg. at 432; MUR 6821, F&LA at 8. The Complaint alleges that the "request or suggestion" regulation does not make an exception for "material [ ] obtained from a publicly available source," so the fact that the "Notices" were publicly available should not prevent the Commission from determining that there was coordination in the distribution of the commercials. Compl. at 6. The Complaint's position, however, is erroneous in light of the just-cited authority.

1 reporting responsibilities of the person making the expenditure.”<sup>39</sup> Nevertheless, a person may  
2 reproduce “a brief quote of materials that demonstrate a candidate’s position as part of a person’s  
3 expression of its own views” without making a contribution to the candidate.<sup>40</sup>

4 In past matters, to determine whether a person republished a candidate’s written  
5 campaign materials, the Commission has examined the degree of overlap between the two  
6 communications.<sup>41</sup> In conducting this analysis, the Commission has concluded that mere  
7 thematic similarities between a candidate’s campaign materials and a third-party communication  
8 are insufficient to establish republication.<sup>42</sup> The Commission has also determined that a person  
9 may create a communication using sentences similar to those appearing in a campaign’s  
10 publications, so long as the sentences use different words or phrasings.<sup>43</sup> Finally, in MUR 6592  
11 (Nebraska Democratic State Central Committee), the Commission determined that there was no  
12 republication when a person created ads repeating the same phrase used by a campaign because  
13 “the phrase [was] commonly used in political discourse, and the ads also contained significant  
14 additional language that differed from the campaign materials.”<sup>44</sup>

<sup>39</sup> 11 C.F.R. § 109.23(a); *see* 52 U.S.C. § 30116(a)(7)(B)(iii). The candidate who produced the campaign materials does not need to report receiving an in-kind contribution unless the republication of her campaign materials is a coordinated communication. 11 C.F.R. § 109.23(a). As we have already concluded here that the Committee did not coordinate with the other Respondents, the Committee did not have a reporting obligation.

<sup>40</sup> 11 C.F.R. § 109.23(b)(4).

<sup>41</sup> *See, e.g.*, MUR 6783 (Indian Americans for Freedom), Factual & Legal Analysis at 5-6 (open matter) (finding reason to believe there was republication when a 501(c)(4) organization produced a mailer and about half of the text on the back of the mailer was identical to the text of a mailer distributed by the campaign).

<sup>42</sup> MUR 6821, F&LA at 7 (stating that the materials contained “similar themes,” but this “overlap” alone was not sufficient to demonstrate republication).

<sup>43</sup> MUR 6502 (Nebraska Democratic State Central Committee), Factual & Legal Analysis at 9 (“F&LA”) (citing MUR 2766 (Auto Dealers and Drivers for Free Trade PAC) for the proposition that “similar sentences . . . do not rise to the level sufficient to indicate republication of campaign materials because of differences in wording or phrasing”).

<sup>44</sup> *Id.*

1                    1.      WOMEN VOTE! Commercials

2                    The Complaint compared WOMEN VOTE!'s advertisements, "Get" and "Spin," with the  
3                    Committee's March 2016 and April 2016 "Notices" about McGinty's economic agenda and  
4                    Sestak's budget plan, respectively. Beyond those high-level thematic similarities, though—  
5                    which are insufficient on their own to find republication—the advertisements and "Notices" had  
6                    little in common.<sup>45</sup> A comparison of the statements in the "Notices" and the advertisements  
7                    shows that the communications contained different words and content.

8                    For example, "Get" omitted the Committee's mention of "special interests," McGinty's  
9                    siblings, her father "walking the beat," and the description of McGinty as a "problem solver."  
10                    On the other hand, "Get" added to the material in the March 2016 "Notice" by stating that  
11                    McGinty's father worked in Philadelphia, McGinty would create "thousands" of new jobs, and  
12                    that McGinty is committed to manufacturers and women.<sup>46</sup> Similarly, while the Committee  
13                    sought to link Sestak to Tea Party Republicans in the April 2016 "Notice," "Spin" did not  
14                    mention the Tea Party, choosing instead to include references to the *New York Times* and the  
15                    AARP that the "Notice" lacked. While the April 2016 "Notice" and "Spin" also contained some  
16                    of the same brief phrases, like "Medicare benefits" and "out-of-pocket," those phrases are  
17                    commonly used in political discourse and policy discussions about the medical system and are  
18                    not evidence of republication.<sup>47</sup>

19                    In light of the differences in the content and phrasing of the commercials, we conclude  
20                    that there is insufficient "overlap between the [ ] communications" to suggest that WOMEN  
21                    VOTE! republished the McGinty Committee's "Notices," and we recommend that the

<sup>45</sup> MUR 6821, F&LA at 7.

<sup>46</sup> See Committee Resp. at 1-3.

<sup>47</sup> See *id.* at 2-4; MUR 6502, F&LA at 9.

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1 Commission find no reason to believe that WOMEN VOTE! and the Committee violated 52  
2 U.S.C. §§ 30104(b), 30116(a) and (f), and 30118(a).<sup>48</sup>

3 **2. Majority Forward Commercial**

4 As to Majority Forward's advertisement, "Love Affair," the Complaint admits that  
5 Majority Forward created and aired the ad almost two weeks before the Committee posted a  
6 "Notice" about Toomey's ties to Wall Street.<sup>49</sup> The Complaint alleges that the timing and  
7 wording of "Love Affair" are evidence that "[e]ither the campaign is communicating to Majority  
8 First [sic] to continue running the ad, or Majority First [sic] took the language from the  
9 campaign."<sup>50</sup> However, the Complaint fails to present sufficient evidence to infer that such an  
10 exchange occurred.<sup>51</sup> Therefore, as there is insufficient evidence to conclude that Majority  
11 Forward had advance access to the "Notice" and republished it, we recommend that the  
12 Commission find no reason to believe that Majority Forward or the Committee violated 52  
13 U.S.C. §§ 30104(b) and 30118(a).

14 **C. EMILY's List did not Take Part in the Alleged Activities**

15 Finally, we recommend that the Commission find no reason to believe that EMILY's List  
16 made an excessive and unreported contribution to the Committee, or that the Committee  
17 accepted such a contribution from EMILY's List, in violation of 52 U.S.C. §§ 30104(b) and  
18 30116(a)(2)(A) and (f). EMILY's List did not finance any of the advertisements,<sup>52</sup> and to the  
19 extent that the Complaint could be read to allege that EMILY's List communicated with the

<sup>48</sup> MUR 6821, F&LA at 7 (stating that "the only overlap between the two communications" was a commonality of themes and that this was "not enough to suggest" republication); MUR 6502, F&LA at 9.

<sup>49</sup> Compl. at 3-4.

<sup>50</sup> *Id.* at 7.

<sup>51</sup> *See id.*

<sup>52</sup> *See* EMILY's List and WOMEN VOTE! Resp. at 2.

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1 Committee about McGinty's advertising needs and then relayed that information to its IEOPC,  
2 WOMEN VOTE!, there is no evidence indicating that such communications occurred.  
3 Moreover, EMILY's List and WOMEN VOTE! state that they maintain a firewall, in compliance  
4 with the Act, and there is no evidence contradicting that representation or suggesting that the  
5 firewall did not function properly.<sup>53</sup>

6 **IV. RECOMMENDATIONS**

- 7 1. Find no reason to believe that Katie McGinty for Senate and Roberta Golden in  
8 her official capacity as treasurer violated 52 U.S.C. §§ 30104(b), 30116(f), and  
9 30118(a);  
10  
11 2. Find no reason to believe that EMILY's List and Ranny Cooper in her official  
12 capacity as treasurer violated 52 U.S.C. §§ 30104(b) and 30116(a)(2)(A);  
13  
14 3. Find no reason to believe that WOMEN VOTE! and Leigh Warren in her official  
15 capacity as treasurer violated 52 U.S.C. §§ 30104(b), 30116(a), and 30118(a);  
16  
17 4. Find no reason to believe that Majority Forward violated 52 U.S.C. §§ 30104(b)  
18 and 30118(a);  
19  
20 5. Approve the attached Factual and Legal Analysis;  
21  
22 6. Approve the appropriate letters; and  
23  
24 7. Close the file.

<sup>53</sup> *Id.* at 7; *see* 11 C.F.R. § 109.21(h) (providing that none of the "conduct" standards are met when a political committee maintains a proper firewall and commits to writing the policies surrounding the firewall).

Kathleen Guith  
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**Attachment**

- ## 1. Factual and Legal Analysis

**FEDERAL ELECTION COMMISSION**

**FACTUAL AND LEGAL ANALYSIS**

**RESPONDENTS:** Katie McGinty for Senate and Roberta Golden  
in her official capacity as treasurer  
EMILY's List and Ranny Cooper in her official  
capacity as treasurer  
WOMEN VOTE! and Leigh Warren in her  
official capacity as treasurer  
Majority Forward

**MUR: 7124**

**I. INTRODUCTION**

This matter was generated by a Complaint filed with the Federal Election Commission (the "Commission") by the Foundation for Accountability and Civic Trust. The Complaint alleges that the principal campaign committee of U.S. Senate candidate Katie McGinty coordinated television advertisements supporting McGinty's campaign with EMILY's List, a multicandidate political committee; WOMEN VOTE!, an independent-expenditure-only political committee ("IEOPC") affiliated with EMILY's List; and Majority Forward, a 501(c)(4) nonprofit corporation. The Complaint also alleges that WOMEN VOTE! and Majority Forward republished McGinty campaign materials in their advertisements. These actions, according to the Complaint, violated the Federal Election Campaign Act of 1971, as amended (the "Act"), because they were not properly disclosed and resulted in excessive and prohibited contributions to the Committee, which the Committee knowingly accepted. However, as discussed in greater detail below, the Commission finds no reason to believe that the Respondents violated 52 U.S.C. §§ 30104(b), 30116(a) and (f), and 30118(a) and closes the file.



**II. FACTUAL AND LEGAL ANALYSIS**

**A. Factual Background**

Katie McGinty was a 2016 U.S. Senate candidate in Pennsylvania. Katie McGinty for Senate and Roberta Golden in her official capacity as treasurer (the “Committee”) was her principal campaign committee and maintained her campaign website.<sup>1</sup> EMILY’s List and Ranny Cooper in her official capacity as treasurer (“EMILY’s List”) is a multicandidate political committee registered with the Commission,<sup>2</sup> and WOMEN VOTE! and Leigh Warren in her official capacity as treasurer (“WOMEN VOTE!”) is an IEOPC affiliated with EMILY’s List and registered with the Commission.<sup>3</sup> Majority Forward is a 501(c)(4) nonprofit corporation.<sup>4</sup>

In 2016, WOMEN VOTE! and Majority Forward paid for and aired television commercials in Pennsylvania supporting McGinty and attacking her opponents.<sup>5</sup> The Complaint alleges that the Committee used McGinty’s campaign website to coordinate with WOMEN VOTE! and Majority Forward about the content and distribution of these commercials.<sup>6</sup> Specifically, the Complaint alleges that the website had a link to an “obscure” subpage that contained tips and instructions about the types of ads that IEOPCs and other organizations should

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<sup>1</sup> Statement of Candidacy, Kathleen Alana McGinty (Aug. 4, 2015); KATIE MCGINTY DEMOCRAT FOR SENATE, <https://katiemcginty.com/> (last visited Feb. 8, 2017) (bearing a “paid for by Katie McGinty for Senate” disclaimer).

<sup>2</sup> Amended Statement of Organization, EMILY’s List (June 4, 2013).

<sup>3</sup> EMILY’s List & WOMEN VOTE! Resp. at 1 (Oct. 6, 2016); Amended Statement of Organization, WOMEN VOTE! (Nov. 4, 2015).

<sup>4</sup> Majority Forward Resp. at 1 (Oct. 7, 2016).

<sup>5</sup> See *infra* at 4-5.

<sup>6</sup> Compl. at 1 (Aug. 15, 2016).

1 run to maximize the McGinty campaign's resources and chances of success. That subpage was  
2 entitled "Notice."<sup>7</sup>

3 The Complaint explains that the "Notice" subpage on the Committee's website had a  
4 different visual appearance than the rest of the website, did not contain any links back to the  
5 website's homepage or to other subpages, repeatedly used the phrase "voters need to know," and  
6 then followed that phrase with a recitation of the information the campaign wanted publicized in  
7 ads.<sup>8</sup> The Complaint alleges that the "Notices" would indicate what segment of the Pennsylvania  
8 population should be targeted with the ads and that the Committee changed the "Notice" page  
9 when it wanted groups to produce new advertisements or wanted to encourage groups to keep  
10 airing a particular ad that was having an impact.<sup>9</sup>

11 The Complaint cites three instances in which it alleges the Committee published  
12 information on the "Notice" page and WOMEN VOTE! and Majority Forward responded by  
13 paying for the Committee's desired advertising. We compare the Committee's "Notices" and the  
14 advertisements side by side.

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7 *Id.* at 2.

8 *Id.*

9 *Id.* at 2-4.

"Notice" Page	WOMEN VOTE! Commercial
<p>In March 2016, the "Notice" page stated:</p> <p>At this point of the campaign, voters in Philadelphia and women all across the state of Pennsylvania need to know that Katie McGinty thinks too many families get the short end of the stick and [are] unable to achieve economic security, while the special interests get ahead. As the ninth of ten children and the daughter of a police officer who walked the beat and [a] restaurant hostess, Katie McGinty is fighting to help everyday families, who have been ignored for too long. Katie McGinty is a problem solver who will create jobs, grow wages, and create opportunity.</p>	<p>On April 5, 2016, WOMEN VOTE! began airing an advertisement entitled "Get:"</p> <p>Get up. Get to school. Get to work. Get by. Katie McGinty knows the routine. Her dad was a Philly cop, mom worked in a restaurant. Then . . . hard work opened doors. Now . . . it's not quite enough. But McGinty's working to change that. Helping create thousands of new jobs. She'll always stand up for manufacturing, higher wages, and equal pay for women. So opportunity never gets out of reach. Katie McGinty for Senate.<sup>10</sup></p>

- 1 The Complaint notes that the information about McGinty's parents was already readily available
- 2 on the "About Katie" subpage of the campaign website, yet the Committee published it again on
- 3 the "Notice" page. The Complaint asserts that this dual publication is evidence that the "Notice"
- 4 page had a different purpose than the rest of the website.<sup>11</sup>

"Notice" Page	WOMEN VOTE! Commercial
<p>In early April 2016, the Committee updated the "Notice" page to read:</p> <p>Voters in Philadelphia and women across the Commonwealth of Pennsylvania still need to know the real Joe Sestak [McGinty's primary opponent] record. He supported a budget plan backed by Tea Party Republicans that would have cut Social Security and Medicare benefits, raised the Social Security retirement age to 69, and forced higher out-of-pocket spending for Medicare recipients.</p>	<p>On April 11, 2016, WOMEN VOTE! began airing a second commercial entitled "Spin:"</p> <p>For Senate, no spin . . . just facts. Joe Sestak supports a plan that the <i>New York Times</i> reported makes cuts to Social Security benefits. And the plan raises the retirement age. It's true. The AARP opposed the plan, citing dramatic cuts to Medicare benefits. The plan Sestak supports means higher out-of-pocket costs for millions on Medicare. Any way you spin it. The truth about Sestak is gonna hurt.<sup>12</sup></p>

<sup>10</sup> Committee Resp. at 1-3 (Oct. 11, 2016).

<sup>11</sup> Compl. at 2-3, 5.

<sup>12</sup> Committee Resp. at 2-4.

- 1 It appears that both of WOMEN VOTE!'s commercials aired in and around Philadelphia, the  
 2 location mentioned in the "Notices."<sup>13</sup>

Majority Forward Commercial	"Notice" Page
<p>On June 24, 2016,<sup>14</sup> Majority Forward started airing a commercial entitled "Love Affair:"</p> <p>It's a love affair. Pat Toomey [McGinty's general opponent] and Wall Street. Wall Street's given Toomey \$2.7 million dollars in contributions. And Toomey supported privatizing Social Security in the stock market. Wall Street would profit with hundreds of billions in fees, even if the market crashed and people lost everything. Pat Toomey, Wall Street. It may be love for them, but it's heartache for the rest of us.</p>	<p>On July 6, 2016, the Committee updated the "Notice" page to state:</p> <p>Pennsylvania voters all across the state need to keep hearing a lot more about Pat Toomey and Wall Street. Wall Street's given Toomey \$2.7 million in contributions, and Toomey supported privatizing Social Security in the stock market. Sen. Toomey made millions as a Wall Street banker. Then he moved to Hong Kong, working for a billionaire Chinese investor. In Congress, Toomey carries Wall Street's water – voting to let banks continue their risky practices and opposing cracking down on Chinese currency manipulation. Toomey working for China has helped cost Pennsylvania more than one hundred and twenty thousand jobs.<sup>15</sup></p>

- 3 As to this final commercial, the Complaint acknowledges that Majority Forward aired "Love  
 4 Affair" before the Committee updated McGinty's campaign website to discuss Toomey's  
 5 relationship with Wall Street. The Complaint alleges that coordination occurred because the  
 6 Committee used the "Notice" page to urge Majority Forward and other organizations to keep  
 7 highlighting Toomey's corporate interests in this and additional communications. The  
 8 Complaint also points out that the Committee copied some of Majority Forward's language  
 9 verbatim for the July 6, 2016 "Notice."<sup>16</sup>

<sup>13</sup> EMILY's List wrote a press release about "Spin," stating that the commercial was "part of WOMEN VOTE!'s \$1 million program that started on April 5<sup>th</sup> mobilizing voters in the Philadelphia area to support Katie McGinty's bid for Senate." Compl., Attach. E. April 5 was the first day "Get" aired. Committee Resp. at 2.

<sup>14</sup> Majority Forward; Report of Independent Expenditures Made and Contributions Received (July 15, 2016).

<sup>15</sup> Committee Resp. at 2, 4.

<sup>16</sup> Compl. at 3-4, 7.

1 Based on the nature of the “Notice” page, the timing and similarities between the  
2 “Notices” and the commercials, and the geographic area in which the commercials aired, the  
3 Complaint alleges that the Committee coordinated with WOMEN VOTE! and Majority Forward  
4 to produce and/or distribute the three commercials. The Complaint asserts that the  
5 communications meet the regulations’ three-part test for coordination and thus qualify as  
6 contributions to the Committee. Therefore, according to the Complaint, WOMEN VOTE! and  
7 Majority Forward, as an IEOPC and a corporation, respectively, violated the Act by making  
8 prohibited and excessive contributions to the Committee; the Committee violated the Act by  
9 accepting unlawful contributions; and all three failed to accurately report their activities to the  
10 Commission.<sup>17</sup>

11 The Complaint also argues that, even if there was no coordination, WOMEN VOTE! still  
12 republished material from the “Notice” page in its commercials. The Complaint argues that the  
13 commercials and “Notices” had similar if not identical language and addressed the same themes,  
14 amounting to republication. The Complaint then concludes that, because the act of republishing  
15 campaign materials is a contribution, WOMEN VOTE! made prohibited and excessive  
16 contributions to the Committee, the Committee accepted the contributions, and they both failed  
17 to accurately report the contributions.<sup>18</sup>

18 Finally, while the Complaint acknowledges that Majority Forward aired “Love Affair”  
19 before the Committee posted the July 2016 “Notice,” it suggests that the Committee may have  
20 informed Majority Forward of the content of the “Notice” in private, allowing Majority Forward

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<sup>17</sup> *Id.* at 4-6.

<sup>18</sup> *Id.* at 5, 7. The Complaint’s allegations against WOMEN VOTE! pertain only to its alleged republication of the Committee’s written materials. The Complaint does not reference video footage, recordings, photographs, or other media.

1 to republish the content in “Love Affair.” The Complaint alleges that this act of republication  
2 would also be a prohibited and unreported contribution, which the Committee knowingly  
3 accepted.<sup>19</sup>

4 The Respondents deny all of the Complaint’s allegations. The Respondents first argue  
5 that, despite the representations in the Complaint, the “Notice” page was publicly available as  
6 part of McGinty’s campaign website, and the Commission has determined that publicly available  
7 information does not satisfy the regulations’ three-part test for coordinated communications.<sup>20</sup>  
8 Furthermore, the Respondents claim that they did not communicate with each other about the  
9 commercials and that the evidence cited in the Complaint is insufficient to create an inference  
10 that they did.<sup>21</sup> Finally, the Respondents state that the text of the WOMEN VOTE! commercials  
11 varied substantially from the “Notices,” and that mere commonality of theme on its own does not  
12 amount to republication.<sup>22</sup>

### 13 B. Legal Analysis

14 The Act provides that an expenditure made by any person “in cooperation, consultation,  
15 or concert, with, or at the request or suggestion of, a candidate, his authorized political  
16 committees or their agents” constitutes an in-kind contribution.<sup>23</sup> IEOPCs and nonprofit  
17 corporations are prohibited from making contributions to candidates and their authorized  
18 committees.<sup>24</sup> Multicandidate committees may make contributions to candidates and authorized

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<sup>19</sup> *Id.* at 7. Again, these republication allegations concern only written materials.

<sup>20</sup> Committee Resp. at 5-6; EMILY’s List & WOMEN VOTE! Resp. at 4-6; Majority Forward Resp. at 4-6.

<sup>21</sup> Committee Resp. at 1, 4; EMILY’s List & WOMEN VOTE! Resp. at 1, 3; Majority Forward Resp. at 1-2.

<sup>22</sup> Committee Resp. at 6-7; EMILY’s List & WOMEN VOTE! Resp. at 6-7; Majority Forward Resp. at 4.

<sup>23</sup> 52 U.S.C. § 30116(a)(7)(B)(i); 11 C.F.R. § 109.20; *see also* 52 U.S.C. § 30104(b) (requiring political committees to disclose to the Commission contributions received from other political committees and persons).

<sup>24</sup> *See* 52 U.S.C. §§ 30116(f), 30118(a); Advisory Op. at 2010-11 (Commonsense Ten) at 2-3.

committees but are limited to \$5,000 per election.<sup>25</sup> It is unlawful for candidates and political committees to knowingly accept an excessive or prohibited contribution.<sup>26</sup>

1. There is no Reason to Believe that WOMEN VOTE! and Majority Forward Coordinated their Communications with the Committee

The Commission's regulations provide a three-part test for determining when a communication is a coordinated expenditure, which is treated as an in-kind contribution.<sup>27</sup> The communication must: (1) be paid for by a third party; (2) satisfy one of four "content" standards listed in 11 C.F.R. § 109.21(c); and (3) satisfy one of five "conduct" standards listed in 11 C.F.R. § 109.21(d).<sup>28</sup> In this matter, the Respondents have not disputed that the commercials satisfy the "payment" and "content" requirements. We therefore focus our analysis on the "conduct" standards.

The Complaint alleges that the commercials satisfy the "request or suggestion" "conduct" standard, which requires that the communication be "created, produced, or distributed at the request or suggestion of a candidate [or] authorized committee."<sup>29</sup> The Commission has explained that the "request or suggestion" "conduct" standard refers to requests or suggestions "made to a select audience, but not those offered to the public generally."<sup>30</sup> As an example of the distinction between generalized and targeted requests, the Commission has provided that "a request that is posted on a web page that is available to the general public is a request to the

<sup>25</sup> See 52 U.S.C. § 30116(a)(2).

<sup>26</sup> *Id.* §§ 30116(f), 30118(a).

<sup>27</sup> 11 C.F.R. § 109.21(a)-(b).

<sup>28</sup> *Id.* § 109.21(a).

<sup>29</sup> *Id.* § 109.21(d)(1). The Complaint purports to address all five "conduct" standards but provides no evidence or specifics as to any standard but "request or suggestion." See Compl. at 6-7.

<sup>30</sup> Coordinated and Independent Expenditures, 68 Fed. Reg. 421, 432 (Jan. 3, 2003) (explanation and justification) ("E&J").

1 general public and does not trigger the [request or suggestion] conduct standard,” whereas a  
2 request sent through an intranet service or by email to a discrete group of recipients would satisfy  
3 the standard.<sup>31</sup>

4 In MUR 6821 (Shaheen for Senate), the Commission found that the use of publicly  
5 available information, including the use of information contained on a candidate’s website, was  
6 not sufficient to satisfy the “conduct” standards.<sup>32</sup> The Complaint in the Shaheen matter alleged  
7 that Shaheen’s principal campaign committee and the Democratic Senatorial Campaign  
8 Committee coordinated with an IEOPC when they posted information about Shaheen’s opponent  
9 on Shaheen’s campaign website and on Twitter. The IEOPC responded to the posts within two  
10 days, circulating a television commercial criticizing Shaheen’s opponent on the same grounds as  
11 discussed in the posts.<sup>33</sup>

12 Here, the facts appear to be materially indistinguishable from the Shaheen MUR.  
13 Contrary to the statements in the Complaint, the Committee’s “Notices” were not obscure and  
14 were readily available on the Committee’s website, with a featured “Notice” even appearing on  
15 the website’s homepage. Users could click a “read more” button within a box containing the  
16 featured “Notice” to be taken to the “Notice” subpage, which was still part of the campaign  
17 website.<sup>34</sup> Thus, just as in MUR 6821, the Committee’s alleged request or suggestion for  
18 advertising appeared on a publicly available website—specifically, the candidate’s campaign

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<sup>31</sup> *Id.*

<sup>32</sup> MUR 6821 (Shaheen for Senate), Factual & Legal Analysis at 7-8 (“F&LA”).

<sup>33</sup> *Id.* at 1-3.

<sup>34</sup> *WayBack Machine*, INTERNET ARCHIVE (last visited Feb. 8, 2017) (search for “https://katiemcginty.com/” to see snapshots of what the campaign website looked like at various times during 2016).



1 website—and was directed to the public generally instead of a select audience. As such, the  
2 McGinty campaign’s “Notices” do not satisfy the “request or suggestion” “conduct” standard.<sup>35</sup>

3 The Complaint also fails to present any information suggesting that the Respondents had  
4 any communications beyond the public “Notices.” The cited similarities between the “Notices”  
5 and the commercials, and the timing and geographic placement of the commercials, are  
6 insufficient to show that any additional private communications occurred. Therefore, because  
7 the available information does not support a determination or reasonable inference that the  
8 “conduct” prong of the coordination test was met, there is no basis to conclude that the  
9 commercials qualify as coordinated communications. Accordingly, the Commission finds no  
10 reason to believe that the Committee, WOMEN VOTE!, or Majority Forward made or accepted  
11 prohibited or excessive contributions, or failed to comply with their reporting requirements, in  
12 violation of 52 U.S.C. §§ 30104(b), 30116(a) and (f), and 30118(a).

13 2. There is no Reason to Believe that Majority Forward and WOMEN  
14 VOTE! Republished McGinty Campaign Materials  
15

16 Similarly, there is no basis to conclude that the Respondents republished campaign  
17 materials. The Commission’s regulations provide that, even when there is no evidence of  
18 coordination, “[t]he financing of the dissemination, distribution, or republication, in whole or in  
19 part, of any . . . campaign materials prepared by the candidate [or] the candidate’s authorized  
20 committee . . . shall be considered a contribution for the purposes of contribution limitations and

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<sup>35</sup> See 11 C.F.R. § 109.21(a), (d); E&J, 68 Fed. Reg. at 432; MUR 6821, F&LA at 8. The Complaint alleges that the “request or suggestion” regulation does not make an exception for “material [ ] obtained from a publicly available source,” so the fact that the “Notices” were publicly available should not prevent the Commission from determining that there was coordination in the distribution of the commercials. Compl. at 6. The Complaint’s position, however, is erroneous in light of the just-cited authority.

1 reporting responsibilities of the person making the expenditure.”<sup>36</sup> Nevertheless, a person may  
2 reproduce “a brief quote of materials that demonstrate a candidate’s position as part of a person’s  
3 expression of its own views” without making a contribution to the candidate.<sup>37</sup>

4 In past matters, to determine whether a person republished a candidate’s written  
5 campaign materials, the Commission has examined the degree of overlap between the two  
6 communications. In conducting this analysis, the Commission has concluded that mere thematic  
7 similarities between a candidate’s campaign materials and a third-party communication are  
8 insufficient to establish republication.<sup>38</sup> The Commission has also determined that a person may  
9 create a communication using sentences similar to those appearing in a campaign’s publications,  
10 so long as the sentences use different words or phrasings.<sup>39</sup> Finally, in MUR 6592 (Nebraska  
11 Democratic State Central Committee), the Commission determined that there was no  
12 republication when a person created ads repeating the same phrase used by a campaign because  
13 “the phrase [was] commonly used in political discourse, and the ads also contained significant  
14 additional language that differed from the campaign materials.”<sup>40</sup>

<sup>36</sup> 11 C.F.R. § 109.23(a); *see* 52 U.S.C. § 30116(a)(7)(B)(iii). The candidate who produced the campaign materials does not need to report receiving an in-kind contribution unless the republication of her campaign materials is a coordinated communication. 11 C.F.R. § 109.23(a). As we have already concluded here that the Committee did not coordinate with the other Respondents, the Committee did not have a reporting obligation.

<sup>37</sup> 11 C.F.R. § 109.23(b)(4).

<sup>38</sup> MUR 6821, F&LA at 7 (stating that the materials contained “similar themes,” but this “overlap” alone was not sufficient to demonstrate republication).

<sup>39</sup> MUR 6502 (Nebraska Democratic State Central Committee), Factual & Legal Analysis at 9 (“F&LA”) (citing MUR 2766 (Auto Dealers and Drivers for Free Trade PAC) for the proposition that “similar sentences . . . do not rise to the level sufficient to indicate republication of campaign materials because of differences in wording or phrasing”).

<sup>40</sup> *Id.*

i. *WOMEN VOTE! Commercials*

The Complaint compared WOMEN VOTE!’s advertisements, “Get” and “Spin,” with the Committee’s March 2016 and April 2016 “Notices” about McGinty’s economic agenda and Sestak’s budget plan, respectively. Beyond those high-level thematic similarities, though—which are insufficient on their own to find republication—the advertisements and “Notices” had little in common.<sup>41</sup> A comparison of the statements in the “Notices” and the advertisements shows that the communications contained different words and content.

For example, “Get” omitted the Committee’s mention of “special interests,” McGinty’s siblings, her father “walking the beat,” and the description of McGinty as a “problem solver.” On the other hand, “Get” added to the material in the March 2016 “Notice” by stating that McGinty’s father worked in Philadelphia, McGinty would create “thousands” of new jobs, and that McGinty is committed to manufacturers and women.<sup>42</sup> Similarly, while the Committee sought to link Sestak to Tea Party Republicans in the April 2016 “Notice,” “Spin” did not mention the Tea Party, choosing instead to include references to the *New York Times* and the AARP that the “Notice” lacked. While the April 2016 “Notice” and “Spin” also contained some of the same brief phrases, like “Medicare benefits” and “out-of-pocket,” those phrases are commonly used in political discourse and policy discussions about the medical system and are not evidence of republication.<sup>43</sup>

In light of the differences in the content and phrasing of the commercials, the Commission concludes that there is insufficient “overlap between the [ ] communications” to

<sup>41</sup> MUR 6821, F&LA at 7.

<sup>42</sup> See Committee Resp. at 1-3.

<sup>43</sup> See *id.* at 2-4; MUR 6502, F&LA at 9.

1 suggest that WOMEN VOTE! republished the McGinty Committee's "Notices," and the  
2 Commission finds no reason to believe that WOMEN VOTE! and the Committee violated 52  
3 U.S.C. §§ 30104(b), 30116(a) and (f), and 30118(a).<sup>44</sup>

4 *ii. Majority Forward Commercial*

5 As to Majority Forward's advertisement, "Love Affair," the Complaint admits that  
6 Majority Forward created and aired the ad almost two weeks before the Committee posted a  
7 "Notice" about Toomey's ties to Wall Street.<sup>45</sup> The Complaint alleges that the timing and  
8 wording of "Love Affair" are evidence that "[e]ither the campaign is communicating to Majority  
9 First [sic] to continue running the ad, or Majority First [sic] took the language from the  
10 campaign."<sup>46</sup> However, the Complaint fails to present sufficient evidence to infer that such an  
11 exchange occurred.<sup>47</sup> Therefore, as there is insufficient evidence to conclude that Majority  
12 Forward had advance access to the "Notice" and republished it, the Commission finds no reason  
13 to believe that Majority Forward or the Committee violated 52 U.S.C. §§ 30104(b) and 30118(a).

14 3. EMILY's List did not Take Part in the Alleged Activities

15 Finally, the Commission finds no reason to believe that EMILY's List made an excessive  
16 and unreported contribution to the Committee, or that the Committee accepted such a  
17 contribution from EMILY's List. EMILY's List did not finance any of the advertisements,<sup>48</sup> and  
18 to the extent that the Complaint could be read to allege that EMILY's List communicated with  
19 the Committee about McGinty's advertising needs and then relayed that information to its

<sup>44</sup> MUR 6821, F&LA at 7 (stating that "the only overlap between the two communications" was a commonality of themes and that this was "not enough to suggest" republication); MUR 6502, F&LA at 9.

<sup>45</sup> Compl. at 3-4.

<sup>46</sup> *Id.* at 7.

<sup>47</sup> *See id.*

<sup>48</sup> *See* EMILY's List and WOMEN VOTE! Resp. at 2.

- 1 IEOPC, WOMEN VOTE!, there is no evidence indicating that such communications occurred..  
2 Moreover, EMILY's List and WOMEN VOTE! state that they maintain a firewall, in compliance  
3 with the Act, and there is no evidence contradicting that representation or suggesting that the  
4 firewall did not function properly.<sup>49</sup> Therefore, the Commission finds no reason to believe that  
5 EMILY's List violated 52 U.S.C. §§ 30104(b) and 30116(a)(2)(A) and (f).

<sup>49</sup> *Id.* at 7; *see* 11 C.F.R. § 109.21(h) (providing that none of the "conduct" standards are met when a political committee maintains a proper firewall and commits to writing the policies surrounding the firewall).